

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Pine Bluffs Community Television System)	File No. EB-02-TS-056
)	
Operator of Cable Systems in:)	
)	
Pine Bluffs, Wyoming)	
Guernsey and Hartville, Wyoming)	
Fort Laramie, Wyoming)	
)	
Request for Waiver of Section 11.11(a) of the)	
Commission's Rules)	

ORDER

Adopted: May 29, 2002**Released: May 31, 2002**

By the Chief, Technical and Public Safety Division, Enforcement Bureau:

1. In this *Order*, we grant Pine Bluffs Community Television System ("Pine Bluffs") temporary, 36-month waivers for the three above-captioned cable television systems of Section 11.11(a) of the Commission's Rules ("Rules"). Section 11.11(a) requires cable systems serving fewer than 5,000 subscribers from a headend to either provide national level Emergency Alert System ("EAS") messages on all programmed channels or install EAS equipment and provide a video interrupt and audio alert on all programmed channels and EAS audio and video messages on at least one programmed channel by October 1, 2002.¹

2. The Cable Act of 1992 added new Section 624(g) to the Communications Act of 1934 ("Act"), which requires that cable systems be capable of providing EAS alerts to their subscribers.² In 1994, the Commission adopted rules requiring cable systems to participate in EAS.³ In 1997, the Commission amended the EAS rules to provide financial relief for small cable systems.⁴ The

¹ 47 C.F.R. § 11.11(a).

² Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 16(b), 106 Stat. 1460, 1490 (1992). Section 624(g) provides that "each cable operator shall comply with such standards as the Commission shall prescribe to ensure that viewers of video programming on cable systems are afforded the same emergency information as is afforded by the emergency broadcasting system pursuant to Commission regulations" 47 U.S.C. § 544(g).

³ *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, Report and Order and Further Notice of Proposed Rule Making*, FO Docket Nos. 91-171/91-301, 10 FCC Rcd 1786 (1994) ("First Report and Order"), reconsideration granted in part, denied in part, 10 FCC Rcd 11494 (1995).

⁴ *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, Second Report and Order*, FO Docket Nos. 91-171/91-301, 12 FCC Rcd 15503 (1997) ("Second Report and

Commission declined to exempt small cable systems from the EAS requirements, concluding that such an exemption would be inconsistent with the statutory mandate of Section 624(g).⁵ However, the Commission extended the deadline for cable systems serving fewer than 10,000 subscribers to begin complying with the EAS rules to October 1, 2002, and provided cable systems serving fewer than 5,000 subscribers the option of either providing national level EAS messages on all programmed channels or installing EAS equipment and providing a video interrupt and audio alert on all programmed channels and EAS audio and video messages on at least one programmed channel.⁶ In addition, the Commission stated that it would grant waivers of the EAS rules to small cable systems on a case-by-case basis upon a showing of financial hardship.⁷ The Commission indicated that waiver requests must contain at least the following information: (1) justification for the waiver, with reference to the particular rule sections for which a waiver is sought; (2) information about the financial status of the requesting entity, such as a balance sheet and income statement for the two previous years (audited, if possible); (3) the number of other entities that serve the requesting entity's coverage area and that have or are expected to install EAS equipment; and (4) the likelihood (such as proximity or frequency) of hazardous risks to the requesting entity's audience.⁸

3. Pine Bluffs filed a request for permanent waiver of Section 11.11(a) on January 4, 2002. In support of its waiver request, Pine Bluffs states that the system serving Pine Bluffs has only 347 subscribers, the system serving Guernsey and Hartsville has only 293 subscribers, and the system serving Fort Laramie has only 37 subscribers. Based on a price quote provided by an EAS equipment manufacturer, Pine Bluffs estimates that it would cost approximately \$9,290 to install EAS equipment at each of these systems for a total cost of \$27,870. Pine Bluffs asserts that this cost will impose a significant negative impact on it and provides its balance sheets and income statements for 1999 and 2000 in support of this assertion. In addition, Pine Bluffs submits that its subscribers are well served by other sources of emergency information. Pine Bluffs states that Guernsey/Hartsville and Laramie are served by five television stations and three radio stations, which are required to install EAS equipment, and there is a siren for alerting residents of these communities to emergencies. Pine Bluffs states that the community of Pine Bluffs is served by five television stations and five radio stations and also has a siren for alerting residents to emergencies. Finally, Pine Bluffs asserts that the likelihood of hazardous risks to its audience is minimal. In this regard, it notes that the three systems are located in the southeastern portion of Wyoming, which is not in the tornado belt and is not subject to earthquakes and hurricanes.

4. We decline to grant Pine Bluffs a permanent waiver of Section 11.11(a). The Commission provided cable systems with fewer than 10,000 subscribers a five-year extension of the deadline to comply with the EAS rules. Thus, small cable systems have already had five years to budget

Order”).

⁵ *Id.* at 15512-13.

⁶ *Id.* at 15516-15518.

⁷ *Id.* at 15513.

⁸ *Id.* at 15513, n. 59.

for EAS equipment. We also conclude that the financial information submitted by Pine Bluffs does not justify a permanent waiver of Section 11.11(a).⁹

5. However, based upon our review of the financial data and other information submitted by Pine Bluffs, we conclude that temporary, 36-month waivers of Section 11.11(a) for these three systems is warranted.¹⁰ In particular, we find that the estimated \$27,870 cost of EAS equipment for these three very small cable systems could impose a financial hardship on Pine Bluffs in the short term.

6. We note that the Commission recently amended the EAS rules to permit cable systems serving fewer than 5,000 subscribers to install FCC-certified decoder-only units, rather than both encoders and decoders, if such a device becomes available.¹¹ Based on comments from equipment manufacturers, we anticipate that such a decoder-only system could result in significant cost savings to small cable systems.¹²

7. Accordingly, **IT IS ORDERED** that, pursuant to Sections 0.111, 0.204(b) and 0.311 of the Rules,¹³ Pine Bluffs Community Television System **IS GRANTED** a waiver of Section 11.11(a) of the Rules until October 1, 2005 for the three captioned cable systems.

8. **IT IS FURTHER ORDERED** that Pine Bluffs Community Television System place a copy of this waiver in its system files.

9. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to counsel for Pine Bluffs Community Television Systems, Howard J. Barr, Esq., Pepper & Corazzini, L.L.P., 1776 K Street, N.W., Suite 200, Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey
Chief, Technical and Public Safety Division
Enforcement Bureau

⁹ It is consistent with Commission precedent to consider the financial condition of an entity's consolidated operations, rather than a limited portion of its operations, in evaluating an entity's financial hardship claim. See *KASA Radio Hogar, Inc.*, FCC 02-93 (released March 27, 2002); *Hinton Telephone Company of Hinton, Oklahoma*, 7 FCC Rcd 6643, 6644 (CCB 1992), *review denied*, 8 FCC Rcd 5176 (1993).

¹⁰ The waiver will extend 36 months from October 1, 2002, until October 1, 2005.

¹¹ *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, EB Docket 01-66, FCC 02-64 at ¶ 71 (released February 26, 2002).

¹² One manufacturer estimated that an EAS decoder-only system can reduce the cost by 64% over what a cable operator would spend for an encoder/decoder unit. *Id.* at ¶ 70.

¹³ 47 C.F.R. §§ 0.111, 0.204(b) and 0.311.